



OFFICE OF THE POLICE COMMISSIONER
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March 28, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Clinton Wike**
Tax Registry No. 935967
111 Precinct
Disciplinary Case No. 2015-14953

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on September 7, 2016, and was charged with the following:

DISCIPLINARY CASE NO. 2015-14953

1. Said Police Officer Clinton Wike, while off-duty and assigned to the 111th Precinct, on or about March 15, 2015, consumed an intoxicant to the extent that he was unfit for duty.

P.G. 203-04, Page 1, Paragraph 2

FITNESS FOR DUTY

2. Said Police Officer Clinton Wike, while off-duty and assigned to the 111th Precinct, on or about March 15, 2015, failed to notify the Department after he was taken into custody by Canadian Authorities for Public Intoxication.

P.G. 206-11, Pages 1-2, Paragraphs 1, 2, 16 & 17

**MEMBER OF THE SERVICE
ARRESTED**

In a Memorandum dated December 13, 2016, Assistant Deputy Commissioner Robert W. Vinal found Police Officer Clinton Wike Guilty of both Specifications in Disciplinary Case No. 2015-14953. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the issues and circumstances in this matter, and have determined that a penalty which includes Ordered Breath Testing and Cooperation with Counseling is warranted. Therefore, it is directed that Police Officer Wike be offered a post-trial negotiated agreement in which he shall forfeit thirty (30) vacation days, be placed on one (1) year dismissal probation, be made the subject of Ordered Breath Testing for that period, and continue to cooperate with counseling, as a disciplinary penalty. If Police Officer Wike does not agree to the terms of this post-trial negotiated agreement, as noted, this Office is to be notified without delay.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

December 13, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Clinton Wike
Tax Registry No. 935967
111 Precinct
Disciplinary Case No. 2015-14953

Charges and Specifications:

1. Said Police Officer Clinton Wike, while off-duty and assigned to the 111th Precinct, on or about March 15, 2015, consumed an intoxicant to the extent that he was unfit for duty.
P.G. 203-04, Page 1, Paragraph 2 – FITNESS FOR DUTY
2. Said Police Officer Clinton Wike, while off-duty and assigned to the 111th Precinct, on or about March 15, 2015, failed to notify the Department after he was taken into custody by Canadian Authorities for Public Intoxication.
P.G. 206-11, Page 1-2, Paragraphs 1, 2, 16 & 17 – MEMBER OF SERVICE
ARRESTED

Appearances:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, New York 10038

Hearing Date:

September 7, 2016

Decision:

Respondent is found Guilty

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 7, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Assistant Department Advocate called Constable Andrew Grove of the Peel Regional Police Department in Ontario, Canada, and NYPD Lieutenant Leonora Drew as witnesses. Respondent called Dwayne Moore and Jeffrey Sanders as witnesses and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is not disputed that on Friday, March 13, 2015, Respondent traveled to Toronto, Canada with his friends, Dwayne Moore, Jeffrey Sanders, and Terrance Kelly (a "rapper" who is known as "Mr. Cheeks"). On the night of March 14, 2015, they attended a concert together. On March 15, 2015, they watched the St. Patrick's Day parade and then went to Pearson International Airport to take a flight to New York which was scheduled to depart at 6:00 p.m. When they arrived at their departure gate, they heard an announcement that their flight was delayed. They entered a nearby bar and remained there for about an hour.

At about 7:00 p.m., they boarded their flight. After five to ten minutes on the plane, a flight attendant approached Respondent and told him, "Sir, you may have had too much to drink. I'm going to ask you to catch the next flight." Respondent did not argue with the flight attendant. He got up from his seat and exited the plane. Moore, Sanders and Kelly remained on

the plane and flew back to New York. Respondent was told that there were no other flights to New York until the following morning.

Constable Andrew Grove testified that he and his partner responded to a call from flight attendants of an intoxicated individual causing a disturbance. When they arrived at the gate, Respondent had already been removed from the plane. Respondent identified himself as a New York City Police Officer to Grove. Grove observed Respondent's speech to be slurred, his breath smelled of alcohol, and he was unsteady on his feet. When Grove asked Respondent if he had had anything to drink, Respondent told him that he had been at a St. Patrick's Day Parade and had drank two beers and one shot of liquor.

After Respondent was informed that he was not going to be permitted to fly that day and that his ticket had been rebooked for a flight the following morning, Grove escorted Respondent back through the Customs area. When a Customs officer asked Respondent why he had been removed from his flight, Respondent stated that he had 20 kilos of cocaine in his luggage. Once Respondent retrieved his luggage, Grove escorted him into the arrivals area. There, he put his hands in the air and stated, "Hey, everybody, take a picture. I'm getting locked up for 20 years." (Tr. 11)

Grove left Respondent next to the entrance to a train shuttle which could transport Respondent to a nearby hotel where he could stay for the night. Grove did not issue Respondent a summons at that point. He decided to use his discretion as a courtesy to a fellow law enforcement officer. Though Respondent appeared upset, he seemed to understand that he would not be able to fly until the next day, so Grove felt comfortable resuming patrol and leaving Respondent at the location in the airport where he would be able to take a train to a hotel.

About 15 minutes later, Grove was approached by a person who asked Grove if he was there "for the drunk guy." The person pointed to Respondent who had remained where Grove had left him. (Tr. 12). As Grove approached Respondent, he noticed that he appeared even more unsteady on his feet than he had looked earlier. Respondent stated, "Sorry guys, I'm drunk." (Tr. 13). Grove testified that he then took a photo of Respondent (Dept. Ex. 1) because he was concerned that no one would believe "how drunk he was." (Tr. 16).

Since at that point Grove did not feel he could leave Respondent on his own to go to a hotel, he escorted him to a hotel that was located across the street from the airport. In order to book Respondent a room for the night at the hotel, Grove asked Respondent for his identification and credit card and spoke to the hotel manager at the front desk. As Grove was booking a room for him, Respondent asked how much it was going to cost and after he was told the room price he started to cause a scene, stating, "I'm not paying \$259. Lock me up for free. Give me a Breathalyzer. Take me back." (Tr. 14). Grove then escorted Respondent out of the hotel and transported him to the police station where he was booked and then lodged in the "drunk tank." Grove had no further interaction with Respondent. Grove prepared and signed a summons charging Respondent with "being intoxicated in a public place" a violation of Section 31(4) of the Ontario Liquor License Act which carries a fine of \$65.00. (Dept. Ex. 4).

Lieutenant Leonora Drew testified that at 0940 hours on March 16, 2015, the Internal Affairs Bureau received a notification from the Peel Regional Police Department, Ontario, Canada, that Respondent had been arrested in Ontario, Canada and that Respondent had been released from custody at approximately 0440 hours on March 16, 2015.

Dwayne Moore testified that when their return flight was delayed for between two to three hours, the men went to the airport bar until they could board their plane. Once on the

plane, Moore and Sanders, were being "a little boisterous" and "maybe a little bit loud."

Respondent told them, "Fellas, keep it down, keep it down." Respondent did not appear to be intoxicated.

Jeffrey Sanders described the group as "jolly" as they waited in the airport and then on the plane, singing and enjoying themselves. (Tr. 85) Everyone was calm on the plane and no one told them to quiet down. One of the flight attendants approached Respondent and asked him to stand up and go with her. (Tr. 100). Respondent was not intoxicated. (Tr. 59).

Respondent testified that on March 15, 2016, the only alcohol he consumed was one beer he drank while eating a sandwich at a restaurant outside his hotel before they left to go to the airport, and one beer and one shot of Hennessy's that he drank at a bar inside the airport after he learned that his flight had been delayed. (Tr. p. 144-145). Respondent testified that at one point while he was on the plane, a flight attendant approached Moore and asked him to be quiet. After Respondent showed his Department ID card to Grove, Grove told him that could stay at a hotel until his flight the following day. They then went directly to the hotel. Respondent remained outside while Grove entered the hotel to book a room. Grove returned with a room key and Respondent asked him how much the room would cost him. When Grove told Respondent that the room would cost \$359.00, Respondent told Grove that he could not afford to pay that much.

Respondent testified that Grove then told him, "Well, the other option is you could crash out at the barracks and then we'll drive you back over to the terminal for your flight." Respondent agreed and Grove went back inside the hotel to cancel the room booking. Grove then brought Respondent to the police station. Grove told Respondent that he would have to handcuff him before they entered the station. Although Respondent felt uncomfortable, since he was unaware of their Department's protocol, he consented and walked into the station handcuffed. He was never

told that he was being arrested or charged with a crime. After removing everything from his pockets, Respondent was told that he could go to sleep and that an officer would wake him at 0400 hours so that he could arrive back at the airport in time for his flight to New York. He was placed into a cell and remained there for about eight hours (Tr. 148).

As Respondent was leaving the stationhouse the next morning, March 16, 2016, an officer handed him a summons. When he asked what it was for, he was told, "Oh, it's nothing. It's just our Public Health Act. Whenever you're removed from a plane, it's the protocol. You have to get this summons so that the airline can document why you were removed from their plane." (Tr. 124) Respondent asked the officer if he needed to notify this Department about the summons and was told that he did not have to.

Respondent was scheduled to work a 1500 hours to 2335 hours tour of duty on March 16, 2016, the day he returned from Canada. When Respondent's flight landed in New York at about 1400 hours, he called his precinct to request to be allowed to take an emergency leave day since he knew he would not be able to arrive at his command by 1500 hours. His request was granted.

Respondent then called his sister, an 18-year member of the Department, and asked her if he should report to Operations that he had received a summons in Canada. His sister advised him to report the incident, which he then did sometime between 1400 hours and 1500 hours. (Tr. 126). Respondent asserted that he did not call his sister before he arrived in New York because his cell phone was not working and he was not able to recharge it before his arrival in New York. He acknowledged that it was a mistake to have relied on the representations of a Canadian police officer regarding whether or not he was required to report to NYPD that he had been issued a summons.

Analysis

Under Specification No. 1, Respondent is charged with consuming an intoxicant on March 15, 2015 to the extent that he was unfit for duty. Respondent denied that he was intoxicated and unfit for duty at any point on March 15, 2015.

Respondent does not dispute that when he was sitting in his seat on the plane, a flight attendant approached him and told him, "Sir, you may have had too much to drink. I'm going to ask you to catch the next flight." Grove testified that he observed Respondent's speech to be slurred, that his breath smelled of alcohol, and that he was unsteady on his feet. Also, Grove described inappropriate comments Respondent made as Grove escorted him back through the customs area into the terminal which are consistent with the behavior of a person who is intoxicated. When a Customs officer asked why he had been removed from his flight, Respondent stated that he had 20 kilos of cocaine in his luggage. At another point, Respondent raised his hands in the air and stated, "Hey, everybody, take a picture. I'm getting locked up for 20 years." (Tr. 11). Shortly after that, Respondent told Grove and his partner, "Sorry, guys, I'm drunk." (Tr. 13). Grove testified that at that point he took a photo of Respondent (Dept. Ex. 1) because he was concerned that no one would believe "how drunk" Respondent "was." (Tr. 16).

Grove testified in a straight-forward, professional manner and did not display any animosity toward Respondent. The credibility of Grove's testimony is enhanced by the undisputed fact that before he finally decided that Respondent had left him no choice but to arrest Respondent for public intoxication, he attempted to get a hotel room for Respondent. Respondent acknowledged that Grove told him that could stay at a hotel until his flight the following day; that Grove personally brought him to the hotel; that Grove booked him a room;

and that Grove was about to hand him the room key when Respondent told Grove that he could not pay the \$259.00 room charge.

Thus, Respondent's own testimony establishes that Grove attempted to get a hotel room for Respondent so that he could sleep off his intoxication and that if Respondent had paid the room charge, Grove would not have arrested Respondent or issued him a summons for public intoxication.

As to the question of how much alcohol Respondent had consumed before the flight attendant approached him and told him that he may have had too much to drink and that he had to leave the plane, in his report Grove wrote that Respondent told him that before he arrived at the airport "he was at the St. Patrick's Day parade in downtown Toronto and had consumed 2 Guinness beers and a shot of Hennessy." (Dx. 3 p. 3) I find that Grove's contemporaneously prepared report refutes Respondent's trial testimony that the only alcohol he consumed before arriving at the airport was a single beer he drank as he ate a sandwich at a restaurant outside his hotel before he left to go to the airport. In determining whether Respondent was intoxicated when he boarded the plane, the alcohol Respondent told Grove he consumed at the St. Patrick's Day parade must be added to the alcohol that Respondent testified he drank at a bar inside the airport during the flight delay, which, by his own admission, consisted of two draft beers and one shot of Hennessy's. (Tr. 144).

Respondent's claim that he was not intoxicated at any point on March 15, 2015, must also be examined in light of his bizarre testimony that it was not until he was handed a summons the next morning that he realized for the first time that he had been arrested by Grove, even though Grove had placed him in handcuffs before bringing him into the police station; and even though all of his property was removed from his possession at the front desk and retained

overnight (Dx. 2); and even though he was placed inside a cell and kept there for about eight hours. (Tr. 148).

I reject Respondent's testimony that he was not in a state of intoxication on March 15, 2015, because any sober off-duty member of the service who had been handcuffed, brought before a desk officer, had their property removed from them, and then had been put inside a cell, would have realized that they were under arrest.

I also reject the testimony of Respondent's friends Moore and Sanders, who remained on the plane and flew home leaving their rejected friend to fend for himself at an airport in Canada, that when they boarded the plane Respondent did not appear to them to be intoxicated. Moore admitted that when Respondent was removed from the plane he did not ask anyone why Respondent was being removed from the plane (Tr. 79), leading to the suspicion that Moore knew full well why Respondent was being removed. Similarly, Sanders testified that after Respondent was directed by a flight attendant to "Come off the plane with me," and after Respondent then told Sanders, "Well, I guess I'm getting on the next flight," the only thing Sanders asked Respondent was, "Do you want me to call your girl?"

Finally, since uniformed members are required to be fit for duty at all times, except when on sick report,¹ the mere fact that Respondent was on vacation does not excuse his misconduct of consuming alcohol to the extent that it rendered him unfit for duty.² Therefore, Respondent is found guilty of Specification No. 1.

Under Specification No. 2, Respondent is charged with having failed to notify the Department after he was taken into custody by Canadian Authorities for Public Intoxication. Patrol Guide Procedure No. 206-11 mandates that when a member of the service (MOS) is

¹ Patrol Guide Procedure No. 203-04(1).

² Patrol Guide Procedure No. 203-04(2); See *Case No. 2014-12067* (Sept. 14, 2016).

arrested outside of New York City, the MOS must immediately personally notify the Operations Unit, and the MOS must personally notify the MOS' commanding officer without delay. Patrol Guide Procedure No. 206-11 further mandates that MOS "who receive a personal summons for a criminal violation, are required to immediately notify their commanding officer, and provide the commanding officer with a copy of the summons."³

Even if Respondent was so intoxicated on March 15, 2015, that he did not realize that he had been arrested by Grove (even though Grove had handcuffed him, even though his property was removed, and even though he was put in a cell for eight hours), Respondent was under a continuing duty to personally make the notifications mandated by Patrol Guide Procedure No. 206-11. As Drew testified, the Department first learned that Respondent had been arrested in Canada at 0940 hours on March 16, 2015, when IAB received a notification from the Peel Regional Police Department that Respondent had been arrested on March 15, 2015, and released from custody at about 0440 hours on March 16, 2015.

Respondent was clearly aware that he had been arrested when he was handed a summons charging him with "being intoxicated in a public place" (Dx. 4) as he was leaving the precinct at about 0440 hours on March 16, 2015. However, he did not ask if he could use a precinct phone so that he could report to Operations and his CO that he had been arrested and issued a summons. Moreover, when he telephoned his command from the airport after his flight arrived in New York he did not request to speak to his CO to report that he had been arrested and issued a summons. He merely requested to take an "E-Day" since he knew he would not be able to report on time for his scheduled tour of duty that day. Thus, it is clear that Respondent spurned

³ Patrol Guide Procedure No. 206-11, page 2, NOTE.

opportunities he had to notify the Operations Unit and his commanding officer that he had been taken into custody by Canadian Authorities and issued a summons for Public Intoxication.

Finally, Respondent testified that he asked the Canadian police officer who handed him the summons if he needed to notify this Department regarding the summons and was told that he did not have to make any notification, and he testified that he did not want to make a report to the Department that he had been arrested and issued a summons until he could obtain advice from his sister who is an 18-year UMOS. This testimony does not serve to excuse or even mitigate his failures to promptly notify the Operations Unit and his CO since Respondent was under a duty to be personally familiar with the notification provisions of Patrol Guide Procedure No. 206-11. Respondent is found guilty of Specification No. 2.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached Confidential Memorandum.

The Assistant Department Advocate (the Advocate) recommended that Respondent forfeit 15 vacation days as a penalty. In support of this recommendation, the Advocate cited three previous disciplinary decisions where officers who had pleaded guilty to having consumed an intoxicant to the extent that they were unfit for duty forfeited 15 vacation days as a penalty. [*Case No. 2013-10053* (Nov. 25, 2013); *Case No. 2015-14009* (Jan. 13, 2016); and *Case No. 2015-14520* (April 7, 2016)]. However, in each of those cases the officer had no prior disciplinary record. Here, Respondent has a prior disciplinary record. As discussed in detail in the attached Confidential Memorandum, four years ago Respondent forfeited 15 vacation days as a penalty after he pleaded guilty to six specifications contained in two separate disciplinary cases.

Respondent's misconduct here took place less than three years after the disposition of the charges in those two disciplinary cases. Moreover, Respondent's misconduct of consuming an intoxicant to the extent that he was unfit for duty caused embarrassment for the Department and brought the Department into disrepute with a Canadian regional police department.

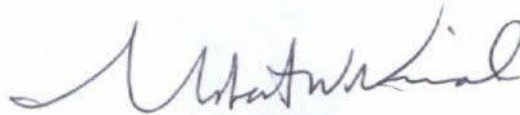
Recently, in *Case No. 2014-12067* (Sept. 14, 2016), the Police Commissioner imposed a penalty consisting of one year on dismissal probation, the forfeiture of 30 days served on pre-trial suspension, and the additional forfeiture of 20 vacation days, on an officer who had previous disciplinary adjudications and who was found guilty after trial of consuming an intoxicant to the extent that he was unfit for duty and failing to provide his Department ID to a supervisor. However, in that case, unlike here, the officer was also found guilty of placing his service firearm unsecured inside his bedroom and failing to ensure that the firearm contained 16 rounds as required.

Respondent's attorney, in his "Fogel Letter" dated December 9, 2016 commenting on the penalty recommendation below, wrote: "With regard to precedent, in case number 2016-15534, signed off just last week by Your Honor, the Department issued a penalty of 20 vacation days for an unfit for duty allegation. The officer in that case has far less service time in the NYPD than Officer Wike." However, the officer in *Case No. 2016-15534* had no prior disciplinary history.

Therefore, consistent with the above-cited decision in *Case No. 2014-12067* (Sept. 14, 2016), I recommend that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year, pursuant to Section 14-115(d) of the Administrative Code, during which he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. In

addition, consistent with progressive discipline, I further recommend that Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CLINTON WIKE
TAX REGISTRY NO. 935967
DISCIPLINARY CASE NO. 2015-14953

Respondent received an overall rating of 3.5 on his 2015 annual performance evaluation; 4.0 on his 2014 performance evaluation; and 3.5 on his 2013 performance evaluation. He has been awarded two Meritorious Police Duty medals and three Excellent Police Duty medals. [REDACTED]

He has a prior disciplinary record. On June 24, 2012, he forfeited 15 vacation days as a penalty after he pleaded guilty to six specifications contained in two separate disciplinary cases.

In Case No. 2012-6682, he pleaded guilty to having failed to notify the Department of his involvement in a 2011 off-duty domestic violence incident, and [REDACTED]

In Case No. 2010-3063, he pleaded guilty to four charges of on-duty misconduct committed on one date in 2009 and on two dates during 2010. He admitted that in 2009 while he was assigned to a Temporary Headquarters Vehicle (THV) he was watching television and that he failed to make an entry in the THV log regarding an inspection; he admitted that on April 2, 2010, he was off post and asleep in the 110 Precinct lounge; and he admitted that on May 26, 2010, he failed to comply with a notification he had received to report to the Queens County District Attorney's office.

On April 27, 2012, he was placed on Level 2 Discipline Monitoring. This monitoring ended on October 27, 2013.

For your information.

Robert W. Vinal
Assistant Deputy Commissioner Trials